

**Village of Upper Nyack
Zoning Board of Appeals Meeting
Tuesday, July 11, 2023, 7:30pm**

MINUTES

A meeting of the Zoning Board of Appeals of the Village of Upper Nyack was held on the above date and called to order at 7:31 p.m. by the Chairman, Thomas Englert.

Other Board members present: Paul Curley, Meg Fowler and Beth Wittig.

Absent Board Members: Steve Lubeck

Also present: Dennis M. Letson, P.E., Village Zoning Inspector and Village Engineer; Noelle C. Wolfson, Esq., Consulting Attorney; and Janet Guerra, Board Secretary.

7:32 p.m.: Review of the minutes of the meeting of March 7, 2023.

The Chairman asked if there were comments to the draft minutes.

The members of the Board did not have any comments on the draft minutes.

Motion to approve the March 7, 2023 Minutes.

Motion: Paul Curley

Second: Beth Wittig

VOTE: 4 (yes) – 0 (no), 1 (absent)

7:32 p.m.: Gregory Cooper and Ilana Davidson, 113 Castle Heights, County Map 60.17-02-41. Application for an interpretation of the building inspector's notice of determination dated January 20, 2023 regarding Village of Upper Nyack Zoning Law §2.2.1.39 (Fence, Deer); and after the fact area variances from the requirements of same regarding installation of perimeter deer fencing on a property improved with a single-family residence in the Residence R-10 district.

This matter was last before the Board on March 7, 2023. At that meeting it was the consensus of the Board that the proposed fence does not qualify as a "deer fence" under the Zoning Law's definition of that term, so for the fence to remain at approximately 8 feet in height a variance of approximately 2 feet from the maximum permitted height is required.

At the March 7, 2023 meeting the Board reviewed the area variance standard in detail and directed counsel to draft a resolution providing for the interpretation discussed and for approval of the variance to permit the fence to measure 8 feet in height.. A draft resolution was circulated to the members of the Board and posted on the Village's website in advance of the July meeting.

The Board asked the applicant to submit photographs showing a tape measure demonstrating the height of the fence. The Board also asked that the tops of the posts be removed. By email dated March 20, 2023 the applicant sent photographs of the fence measurements as requested and confirmed that the top of all the posts have been removed. Those photographs depict that some portions of the fence are up to approximately 8 feet, 4 inches in height.

There was a discussion among the Board members as to whether the applicant should be permitted to keep the fence as is although portions are approximately 8 feet, 4 inches in height, or whether the applicant should be required to reduce the height to 8 feet. It was the consensus of the Board that given the design and location of the fence and the fact that it is already constructed, it could remain in its current condition at its current height.

The Board acknowledged that the public hearing was still opened and asked if there were any comments from the members of the public. No members of the public were in attendance to speak on the application.

Motion to Close the public hearing.

Motion: Paul Curley

Second: Beth Wittig

VOTE: 4 (yes) – 0 (no), 1 (absent)

Motion to approve the Resolution prepared by counsel as amended to reflect the revised fence height of up to 8 feet, 4 inches in certain locations.

Motion: Paul Curley

Second: Meg Fowler

VOTE: 4 (yes) – 0 (no), 1 (absent)

A copy of the Resolution is attached to the minutes.

7:39 p.m.: Nyack Field Club, 335 North Midland Avenue, County Map No. 60.13-03-58.

Application for an interpretation of the Upper Nyack Zoning Law (the “Zoning Law”) that either (i) Zoning Law §6.10 (Tennis Courts and other Sports Courts) does not apply to the Private Membership Club use of the Property, or (ii) if it does, that proposed new and expanded sports courts are not located in the Front Building Setback; or, in the alternative, seeking area variances from the requirements of Zoning Law §6.10.1 (Prohibition against sports courts in a Front Building Setback) to permit a new and expanded sports court within the Front Building Setback. The Applicant is also seeking an area variance from Zoning Law §4.2.2, Row 4, Col. 9 to permit a maximum 29.47% Development Coverage on the Property where a maximum 25% Development Coverage is permitted. The Property is in the Residence R-30 and R-10 districts and is improved with a Private Membership Club.

Board Member Meg Fowler recused herself from consideration of this application and left the meeting.

The Chairman read a summary of the application.

Applicant Representatives: The following were present on behalf of the Applicant: Robert Knoebel, Marc Sauriol, Peter Klose, Bill Slattery, Leigh Salzberg, Lisa Chang, Michael Chang. Jay Greenwell, PLS, was also present to represent the Club.

Mr. Knoebel explained that the Club has been a private membership club since 1954. It is located on an approximately 12-acre parcel on North Midland Avenue. He said that it is an important community resource and 89 Club members were residents of Upper Nyack. He explained that since 2008 the Village has implemented a special use permit law whereby the Club is a special permit use, a legal use but one that has to have its permit renewed every 5 years.

Mr. Knoebel explained that the applicant has applied to the Planning Board for the required reissuance of the Club's special use permit, that the Club appeared before the Planning Board on that application in May and will return to the Planning Board for further review at its July 26th meeting. The Planning Board referred the application to the Zoning Board of Appeals to seek variances.

He explained that in 2022 the Village adopted a new zoning law, one provision of which prohibits sports courts in the Front Building Setback. He explained that this provision poses a hardship for the Club, which has approximately 351 feet of yard area within the Front Building Setback, because it prohibits a large portion of the Club's property from being improved with sports courts.

He indicated that the Club will present an interpretation of the 2022 Zoning Law for the Board's consideration that the prohibition on sports courts in the Front Building Setback does not apply to the Club. However, he noted that if the Zoning Board members disagreed with the Club's proposed interpretation the Club would address the statutory variance standard.

Mr. Greenwell presented the proposed plan to the Board. He advised that he did not prepare the original survey, which was prepared by Bill James, but that the Club retained him to review the CAD file of the James survey and assemble a plan showing the existing and proposed improvements and the bulk table. Mr. Greenwell presented the plan indicating the different areas of the Club (the pool, paddleball courts, tennis courts, and parking). He identified where the former basketball court was enlarged and converted to a pickleball court and the location of the proposed basketball court. He also explained that the Club is proposing to add two new paddleball courts in the general location of the existing sandbox. The sandbox and a transformer would be relocated to accommodate those courts.

Mr. Greenwell explained the other areas of the property such as the northwest corner (portion of the front lawn), which is used for the summer camp, the wooded area, and an open area by the pool. He explained that from the Club board's perspective the proposed location for the basketball court is the best location because placing the court in the back corner of the property would place it closer to neighboring properties than as proposed and in the proposed position it is easier for parents to supervise children using the court from the clubhouse.

Mr. Greenwell further explained the existing and proposed development coverage and indicated that the proposed development coverage was based on the addition of the basketball courts, paddleball courts and some additional walkways.

Chairman Englert asked if the expansion and conversion of the former basketball court to the pickleball court was completed and Mr. Knoebel confirmed that it was. He also clarified that at this point the Club board has not approved the construction of the new paddleball courts, but because they were required to seek the reissuance of the special use permit at this time, the Club decided to add them to the plan just in case the Club board approved their construction during the duration of the approval.

Mr. Greenwell confirmed that the proposed paddleball courts would comply with all of the required zoning setbacks and that no zoning variance (aside from the general coverage variance) was needed for those courts.

Mr. Klose wanted to address the finer point of the front building setback vs. required front yard. He argued that if the Zoning Law is construed to prohibit placing sports courts in the Front Building Setback, it would impinge upon the use of the Club that would prohibit the Club from using that large area for a part of its principal use. He noted that sports courts and a portion of the pool are already located in the Front Building Setback as preexisting structures.

Mr. Klose discussed the definitions in the Zoning Law – Section 2.1.138 (Required Front Yard) and Section 2.1.107 (Front Building Setback) and argued that the intent of the law was not to prohibit a use like the Club (as compared with a single-family residence) from having sports courts in the Front Building Setback, but rather only in the required front yard (i.e. the front 30 feet).

There was a discussion about the general purpose and intent of the law and what it was and was not intended to prohibit in the Front Building Setback. Club representatives argued that to prohibit sports courts in the Front Building Setback is a hardship to the Club because the principal building on the Club property (existing at the time the 2022 Zoning Law was adopted) is setback significantly from North Midland Avenue and it could not have been the intent to prohibit the entire Front Building Setback area (the area between the face of the building and the front lot line for the length of the lot) from being used for sports courts, which is an integral part of the Club use.

Mr. Klose suggested that application of the Front Building Setback to the property effected a taking of that area. The Board's counsel and Zoning Inspector disagreed. The Zoning Inspector explained that it was the siting of the building on the lot that creates such a large Front Building Setback and if the building was closer to the front lot line more of the property could be used for sports courts without violating the prohibition on courts in the Front Building Setback.

The Board's counsel further explained that Private Membership Clubs are permitted in most residential zoning districts by special use permit so when considering the intent, the application of the law beyond one property should be considered. If the general law creates a hardship in the application to one property, variances are the appropriate avenue to explore for relief.

There was a discussion about the specific provisions of the Zoning Law. Section 9.6.13.8 provides that swimming pools and sports courts that are a part of a Private Membership Club use are subject to the requirements of Zoning Law Sections 6.9 and 6.10. Section 6.10.1 specifically provides that sports courts shall not be located in the Front Building Setback.

Motion to open the public hearing.

Motion: Beth Wittig

Second: Paul Curley

VOTE: 3 (yes- Wittig, Curley, Englert) – 0 (no), 1 (absent- Lubeck), 1 (absent- Fowler)

Steven Bolson- Mr. Bolson's property borders the Club to the west by the tennis courts. He commented that in his view the law was clear that the sports courts are not prohibited in the Front Building Setback, so the question here should be whether the variance should be granted. Mr. Bolson asked if kids are permitted to play basketball at the club after hours.

Representatives of the Club advised that the courts are available for play whenever the Club is open. However, at times they do have people trespassing on the Courts afterhours. The Club can address late night use of the court. Representatives of the Club confirmed that there would be no lighting around the court, so most use would occur during the daylight hours.

John Colgan- Club member. Mr. Colgan explained that he likes the setback of the clubhouse from North Midland Avenue and the associated lawn visually. He objects to placing the basketball court in the Front Building Setback because he thinks it will detract from the entire visual of the clubhouse and lawn, which is part of the ambiance of the Club. If a variance is considered, the Board should think about requiring the applicant to provide a reasonable viewshed of the clubhouse from North Midland. Mr. Colgan stated that there might be a better alternative location for the basketball court on the property, and that some additional design work should have been explored to make this a visually integrated plan. He said what is proposed looks like an engineering plan, and more thought should have been given to the proposed layout and design.

Larry Nathanson- Castle Heights Avenue. Mr. Nathanson explained that the pickleball court expansion was undertaken without a permit. He also stated that construction of the basketball court was started without a permit and that the Village issued a stop work order.

Mr. Knoebel acknowledged that the stop work order was issued but stated that the Club has not done any work in violation of the stop work order and immediately applied to the Planning Board for approvals. The Board counsel confirmed that the stop work order was issued but agreed that it was her understanding that since the stop work order was issued the Club has not undertaken any further work on the basketball court.

There was a discussion about the procedural requirements and whether the Board was required to make a formal interpretation before moving on to consider the variance application. Counsel advised the Board that a determination on the interpretation was required before the variance

could be considered because the interpretation will affect the nature and scope of variances needed.

The Board considered whether to adopt a formal resolution on the interpretation question. Mr. Klose objected to the Board taking formal action on the interpretation and variances at different times because of the statute of limitations issues that presents. The Board's counsel acknowledged that concern and advised the Board that it could adopt a formal resolution or could make an informal determination on which the consideration of the variances could be based, but consider formal resolutions on the interpretation and variance questions at the end of the review. The Board chose the latter and explained that it was the general consensus of the Board to find that based on the plain language of the Zoning Law and the fact that Section 9.6.13.8 expressly states that pools and sports courts are subject to the requirements of Zoning Law Sections 6.9 and 6.10 and Section 6.10.1 specifically provides that sports courts shall not be located in the Front Building Setback, the Board affirmed the determination of the Zoning Inspector that sports courts are prohibited in the Front Building Setback and that in order for the Club to construct the basketball court and retain the expanded area of the pickleball court as proposed area variances would be needed.

Mr. Knoebel then addressed the variance application. He explained that the Club's written submission addressed the variance factors. He further explained that the proposed basketball court and pickleball court expansion were significantly setback from North Midland Avenue, with the closest portion of such improvements 136 feet from North Midland Avenue, more than 3 times the required front yard setback.

Lisa Chang, Club member, described the basketball court. She explained that the children's summer camp makes full use of the front lawn and placing the court in the proposed location would be in proximity to the camp. She also explained that the location of the court was ideal for the way in which members use the Club facilities. She explained that parents often congregate and grill near the clubhouse and the kids use the basketball court. Placing the court near the clubhouse allows parents to better monitor children while they are playing. She said that there was some discussion of placing the basketball court on the other side of the pickleball court further from the clubhouse, but that is closer to the gravel drive shown on the site plan and farther from the clubhouse, so it would not be as easy for parents to monitor their children from the clubhouse in that location and that being close to the gravel drive could pose a greater safety risk.

Board Member Curley agreed that from a functional perspective the location makes sense. He said that he has viewed the property and the location of the basketball court is apparent since the clearing that was completed before the stop work order was issued indicates its location. He noted that it is not directly in front of the main portion of the clubhouse, it is toward the north side of the clubhouse, it is setback significantly from North Midland Avenue and existing screening along the Club's North Midland Avenue frontage already screens that location. He did not think that placing the court in this location would cause a significant visual impediment of the clubhouse from the street, but he acknowledged Mr. Colgan's point about the siting of the house as a part of a broader visual of the Club.

Club Member Marc Sauriol also spoke about the location of the Court and why it is optimal for the way the Club property is used. It was noted that even if the Court was moved to the other side of the pickleball court, a variance from the Front Building Setback requirements would still be needed, so that alternative would not eliminate the need for the variance.

Mr. Knoebel acknowledged the visual importance of the clubhouse and indicated that separate from this application the club board is considering lighting improvements on the property to give more prominence to the clubhouse.

Board member Wittig asked if it would be possible to move the basketball court to the area labeled picnic area on the site plan as it is fairly close to the clubhouse. Mr. Knoebel indicated that removing the picnic area and placing the court there would not be a better option than the location as proposed because the area is somewhat sloped, several trees would have to be removed and drainage is in this location.

It was noted that the proposed site plan did not include topographical information or tree locations so those considerations were not readily apparent from the review of the plan.

Village Zoning Inspector/Village Engineer Letson agreed that even though the picnic area is fairly level it is so because it is slightly elevated with a retaining wall, and even though it may be wide enough to accommodate the court, it likely would not be long enough without some additional earthwork.

There was also a brief discussion about whether the court could be located in the wooded area on the Property but it was the general consensus that clearing the wooded area for the court was not a better alternative.

Ms. Salzberg, representative of the Club, indicated that the demographic of the Club has been moving towards larger families. The Club board, in making its plan for Club improvements, is thinking of the functionality of this family dynamic. She said that the Club's board has been considering this for some time and has put a lot of thought into it.

Mr. Colgan indicated that he agreed that the picnic area would not be a suitable place for the basketball court. He asked how large the court would be, how many hoops it would have and whether it would be a year-round improvement or seasonal.

Representatives of the Club explained that the court would be 60 feet by 40 feet with two hoops. Club representatives said that it would be a permanent improvement, not seasonal, and that members would be able to use the Court year-round unless snow/weather conditions prevented it.

Board Member Curley asked about the visual aspects of the court, i.e. whether it would be fenced, proposed landscaping and similar considerations.

Mr. Knoebel indicated that there would be no fencing around the basketball court. He noted that although fencing is existing and necessary around the pickleball court because of the nature of the game, fencing was discussed with the Planning Board and neither it nor the Club thought

fencing was needed or desirable around the basketball court. As to screening, at present the Club is proposing to screen the pickleball court expansion and the proposed basketball court from North Midland Avenue with a row of green giant arbor vitae, whereby trees would be planted approximately 3.5 feet apart. The trees would be 6ft at planted height.

Mr. Colgan said that the Club should consider an approach to landscaping that provides more visual interest, rather than just the arbor vitae. Perhaps the Club could consider hiring a landscape architect to design something with more visual interest.

Board Member Wittig asked if a landscaping plan could be designed not just to buffer the view of the courts from North Midland Avenue, but to augment the property to frame and focus attention to the house to be in keeping with the intent of the Front Building Setback regulations.

Zoning Inspector/Village Engineer Letson suggested that the applicant might want to consider lining the driveway with trees to draw attention to the house down the driveway and direct attention away from the court area.

Mr. Knoebel indicated that landscaping and design is something that would be considered by the Planning Board in its review of the special use permit and site plan application and asked the Zoning Board to defer to the Planning Board on the specifics of the landscape design.

Ms. Salzberg explained that there is a member of the Club's board who is specifically responsible for the grounds and asked that the Board defer to the Club's judgement about landscaping.

The Zoning Board members discussed the proposed landscaping options. The Board's counsel explained that the Board could defer the question of the appropriate scope and scale of landscaping to the Planning Board, or the application for the variances could be adjourned to give the applicant a chance to present a proposed landscape concept to the Zoning Board. However, if the Board defers the matter to the Planning Board, the Zoning Board will not have an opportunity to engage in further review of the landscape design.

Board Member Curley indicated that he did not want to hold up the determination on the application because of the landscaping and would be comfortable deferring review of the landscape design to the Planning Board. Board Member Wittig and Chairman Englert agreed.

Mr. Klose asked whether a variance was needed for the pickleball court since it was existing before the 2022 Zoning Law was adopted. Village Zoning Inspector/ Village Engineer Letson indicated that a variance is needed for that expansion area because the expanded portion of the court was not legally existing prior to the change in the law as the Club never obtained site plan approval for the expansion and site plan approval to expand the court was required under the law proceeding the 2022 Zoning law.

Mr. Letson confirmed that three variances are needed: (1) the variance to allow the proposed basketball court to be located in the Front Building Setback; (2) the variance to allow the expansion of the former basketball (now pickleball court) in the Front Building Setback; and (3)

the Development Coverage variance. Mr. Letson further clarified that although Development Coverage is a new term used in the 2022 Zoning Law, the zoning law in effect prior to the 2022 Zoning Law had the same coverage limitations as imposed by the 2022 Zoning Law.

The Board members discussed how to proceed procedurally and they discussed potential conditions to any variance that might be granted. The Board also reviewed the five factors of the area variance standard in the context of the extensive discussion that has occurred during the public hearing.

Board Member Curley summarized conditions that should be considered in a resolution granting the requested variances as follows: if a variance were to be granted it should be conditioned on no lighting on the basketball court, no chain link or similar fencing around the basketball court, and that a landscaping plan with evergreen plantings with seasonal interest to buffer the view of the court and augment the view of the clubhouse should be considered, but that the specific review of such plan should be deferred to the Planning Board. The members of the Board expressed an interest in making a determination on the variance at this session of the hearing.

The Chairman called a brief recess at the Board's Counsel's request to allow counsel time to draft a resolution for the Board's consideration.

The meeting resumed. The Board members and counsel discussed the procedural sequence of reviewing and discussing the proposed resolutions, continuing the public hearing, closing the hearing and voting on the resolutions.

The Board's counsel read the proposed resolutions and discussed the findings and conditions with the members of the Board. The applicant and members of the public were also invited to comment during this review.

Before the public hearing was closed, there was a discussion about the SEQRA classification of the proposed application. The Front Building Setback variances are Type II actions under SEQRA, but the Development Coverage variance is an unlisted action under SEQRA for which an uncoordinated review under SEQRA is permitted. The Board reviewed Part 2 of the Short New York State DEC Environmental Assessment Form as follows and evaluated the potential environmental impacts of the granting of the variances:

EAF Part 2, Question 1: Will the proposed action create a material conflict with an adopted land use plan or zoning regulations? *Response: The Board finds that it will not because the proposed use of the property, a private membership club, is a permitted use by special permit on the property. The applicant has previously been granted a special use permit and currently has an application pending before the Planning Board for reissuance of that permit. The proposed sports courts that require the variances at issue before the Board are customary accessory uses to the private membership club.*

EAF Part 2, Question 2: Will the proposed action result in a change in the use or intensity of use of land? *Response: The Board finds that it will not. The applicant has represented that the number of club memberships is capped at 205 and will submit documentation (its bylaws) to the*

board demonstrating that cap. Accordingly, the new courts will not cause an increase in membership beyond that previously allowed.

EAF Part 2, Question 3: Will the proposed action impair the character or quality of the existing community? *No. The Club has existed in its current location for several years and the addition of the courts and minor increase in coverage is in keeping with the Club use and pattern of development. The Club is subject to review by the Planning Board as a special permit use.*

EAF Part 2, Question 4: Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area? *No. There are no Critical Environmental Areas in the Village.*

EAF Part 2, Question 5: Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walking? *No. The proposed improvements are not expected to increase the intensity of Club use or traffic to the Club. Club representatives have stated that the Club's membership is capped at 205 members and will submit the Club's bylaws for the record demonstrating the same.*

EAF Part 2, Question 6: Does the proposed action meet or exceed the state energy code requirements? *This question is not applicable. The proposed improvements will not affect the Club's demand for energy. There is no lighting on the proposed courts and they do not otherwise require extension of electrical services.*

EAF Part 2, Question 7: Will the proposed action impact existing water and sewer services? *No, no modification of the existing water and sewer services is required for the improvements that are the subject of the variances.*

EAF Part 2, Question 8: Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources? *The Board finds that it will not. Although the clubhouse on the property is an important architectural structure and the proposed basketball court is located within the Front Building Setback, the applicant will propose landscaping to screen the court and to accentuate views toward the clubhouse in a manner to be approved by the Planning Board. There will be no fencing around the proposed basketball court. Accordingly, any impacts to the aesthetic will not be significant and will be mitigated with additional landscaping.*

EAF Part 2, Question 9: Will the proposed action result in an adverse change to natural resources? *No, the proposed changes are fairly minor improvements within areas that are already used as lawn or other recreation areas.*

EAF Part 2, Question 10: Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems? *No. Although the proposed improvements will cause an increase in the Development Coverage on the Property, the proposed courts are being located in areas that are generally flat and stormwater runoff will be diverted to surrounding lawns on the Property where it can infiltrate into the ground.*

EAF Part 2, Question 11: Will the proposed action create a hazard to environmental resources or human health? *No, the proposed improvements that are subject to the variance are fairly minor accessory improvements that will not cause a health hazard.*

Motion to adopt a Negative Declaration pursuant to the New York State Environmental Quality Review Act based on the above-described review of the Short Environmental Assessment Form Part 2.

Motion: Paul Curley

Second: Beth Wittig

Vote: 3 (yes- Curley, Wittig, Englert) – 0 (no), 1 (absent- Lubeck), 1 (absent- Fowler)

The Chairman asked if there were any additional comments from the public. Hearing none he asked for a motion to close the public hearing.

Motion to Close the Public Hearing.

Motion: Beth Wittig

Second: Paul Curley

Vote: 3 (yes- Curley, Wittig, Englert) – 0 (no), 1 (absent- Lubeck), 1 (absent- Fowler)

Motion to affirm the Zoning Inspector’s interpretation that the Village’s 2022 Zoning Law Section 6.10 (particularly the prohibition on sports courts in the Front Building Setback) applies to the Property and that area variances are needed in order for the sports courts to be located as proposed. Section 9.6.13.8. of the Village’s 2022 Zoning Law (Private Membership Clubs) provides that “Swimming Pools, tennis courts and other outdoor sports courts and facilities shall comply with the requirements of Sections 6.9 and 6.10.” In turn, Section 6.10.1 provides that “Tennis courts or other sports courts shall not be located in the Front Building Setback.” The importation of Section 6.10 into Section 9.6.13.8 without limitation clearly demonstrates that sports courts are not permitted within the Front Building Setback for private membership clubs and that Section 6.10 applies to properties improved with that use (including the Nyack Field Club property) and the Zoning Inspector’s determination should be affirmed.

Motion: Paul Curley

Second: Beth Wittig

Vote: 3 (yes- Curley, Wittig, Englert) – 0 (no), 1 (absent- Lubeck), 1 (absent- Fowler)

In light of the determination that the 2022 Zoning Law’s prohibition on sports courts within the Front Building Setback applies, the Board reviewed the statutory area variance test for the three area variances that are required: (1) a variance from §§6.10.1 (Prohibition against sports courts in a Front Building Setback) and 9.6.13.8 to permit a new basketball court within the Front Building Setback, to be setback at least 155 feet from the front property line; (2) a variance from §§6.10.1 and 9.6.13.8 to allow the expansion to the existing pickleball court within the Front Building Setback, set back at least 136.1 feet from the front lot line; and (3) a variance from

Zoning Law §4.2.2, Row 4, Col. 9 to allow a maximum 29.6% Development Coverage on the Property where a 25% Development Coverage is the maximum permitted.

The benefit to the Club is significant as the proposed improvements are germane to the principal purpose of the Club to provide additional recreational opportunities to Club members.

The Board members then discussed the five factors.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to the nearby properties will be created by the granting of the area variance. Granting the requested variance will not cause an undesirable change in the character of the neighborhood or a detriment to nearby properties. The Club demonstrated that functionally the proposed location of the courts is the optimal place for the courts; the pickleball court is already existing (constructed without a permit). The proposed area is optimal from the Club's perspective for the basketball court because it is level, large enough to accommodate the Court and close to the clubhouse to allow for supervision of children using the court from the area surrounding the clubhouse. Proposed landscape screening (to be reviewed and approved by the Planning Board during its review of the Club's pending special use permit and site plan approval applications) and the significant setback of the courts from North Midland Avenue (155 feet from the property's front lot line to the proposed basketball court and 136 feet from the property's front lot line to the expanded pickleball court) will mitigate visual impacts.

In evaluating this factor, the Board places significant reliance on the fact that the proposed location of the courts do not significantly impede the view of the clubhouse from North Midland Avenue and that landscaping that satisfactorily obscures the view of the courts from the road and maintains the natural view and appearance of the front yard will be provided. Additionally, there will be no chain link or other solid fence surrounding the basketball court, so as not to create a tall visual barrier in that location. The applicant has represented that lighting on the courts will not be provided.

Although with the improvements the Development Coverage on the Property will exceed the maximum permitted (25% permitted, 29.6% proposed), the property is large, the increase in coverage is minor, there have been no documented stormwater management issues and the area where the courts are located is fairly level and water from the new courts will flow onto the adjacent lawn where it can infiltrate into the ground.

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. The Board finds that it cannot. The Front Building Setback is the setback between the Property's front lot line to the line that runs the horizontal length of the Property from the point of the clubhouse that is closest to the front lot line. Although several alternative locations for the courts were discussed during the public hearing, some were still within the Front Building Setback and therefore would not eliminate the need for the variance and other alternative locations were not feasible due to other existing improvements, existing mature trees or changes in grade.

3. Whether the requested area variance is substantial. Although the requested variances are numerically large, they are not expected to have a substantial negative impact on the surrounding community.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The Board finds that they will not for the reasons described in response to factors one and three above and in its evaluation of environmental impacts during its review of the EAF Part 2.

5. Whether the alleged difficulty was self-created. The Board finds that the need for the variances is arguably self-created as it stems from the Club's desire to construct the courts in this location and add to the property's Development Coverage. However, because the proposed improvements will not otherwise negatively impact the surrounding community, the Board finds that the self-created nature of the need for the variance does not require its denial.

Weighing and balancing the above factors, the Board hereby finds that the benefit to the Club, here the ability to retain the expanded pickleball court, construct the proposed basketball court and maintain a development coverage of 29.6% on the property, is a significant benefit, and that there is no corresponding detriment to the health, safety and welfare of the community by the grant of the variances in light of the fact that the courts to be located in the Front Building Setback will be adequately screened with landscaping, will not be lighted and, as to the basketball court, will not be enclosed with fencing.

Motion to grant area variances: Based on the application of the area variance standards as evaluated and as discussed at the public hearing, the following variances from the 2022 Village of Upper Nyack Zoning Law are granted subject to the following conditions:

Area variances from Village of Upper Nyack Zoning Law §6.10.1 (Prohibition against sports courts in a Front Building Setback) and §9.6.13.8 to permit a new basketball court within the Front Building Setback, to be setback at least 155 feet from the front lot line, and expanded Pickleball Court within the Front Building Setback set back at least 136.1 feet from the front lot line where such courts are not permitted in the Front Building Setback pursuant to the above-referenced sections; and an area variance from Zoning Law §4.2.2, Row 4, Col. 9 to permit a maximum 29.6% Development Coverage on the property where a maximum 25% Development Coverage is permitted, subject to the following conditions:

1. **Compliance with the plan prepared by Jay A Greenwell, titled *Site Plan for Improvements*, dated 5/24/23 as it may be revised by the Planning Board, provided that such changes do not increase the magnitude of any of the variances.**
2. **The applicant shall not install lighting to illuminate the basketball court or pickleball courts.**
3. **The applicant shall not install a chain link or board fence around the basketball court.**
4. **The applicant shall provide landscape screening to include evergreen screening of the basketball court and pickleball court and seasonal interest plantings within the**

landscaped area, in a configuration to be reviewed and determined by the Planning Board in the review of the Club's pending special use permit and site plan applications.

5. This variance shall expire pursuant to the terms of Section 12.4.9 of the Village Zoning Law or if a special use permit and site plan approval including the proposed improvements are not granted by the Planning Board within one year of the date of this resolution.

Motion: Beth Wittig

Second: Paul Curley

Vote: 3 (yes- Curley, Wittig, Englert) – 0 (no), 1 (absent- Lubeck), 1 (absent- Fowler)

9:48 p.m. Motion to adjourn the meeting.

Motion: Beth Wittig

Second: Paul Curley

Vote: 3 (yes Curley, Wittig, Englert) – 0 (no), 1 (absent- Fowler), 1 (absent- Lubeck)